Supreme Court, U.S.
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No. 98-1554

IN THE

Supreme Court of the United States

BOARD OF REGENTS OF THE NEW MEXICO STATE UNIVERSITY and JIM PAUL,

Petitioners,

v.

FLETCHER COCKRELL,

Respondent.

On Petition for a Writ of Certiorari to the New Mexico Court of Appeals

MEMORANDUM FOR RESPONDENT

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MEMORANDUM FOR RESPONDENT

The Respondent, Fletcher Cockrell, does not oppose the grant of certiorari sought by the Board of Regents of New Mexico State University and Jim Paul, the Petitioners. The Petition (at pages 4 through 7) fairly states the procedural history and nature of the case.[1] Respondent believes that the New Mexico Court of Appeals correctly determined that state sovereign immunity does not bar suit based upon a federal statute. The central issue of this case, of course, is before the United States Supreme Court in *Alden v. Maine* (No. 98-436). This same issue is also the subject of a petition for writ of certiorari in *State of New Mexico Department of Public Safety v. Whittington* (No. 98-1110) (again originating out of New Mexico), as well as in a petition for a writ of certiorari in *Arkansas Dept. of Education v. Jacoby* (No. 98-04).

The various cases before this Court all involve the question of the interplay between Congress' Article I legislative power, state sovereign immunity, the Supremacy Clause of the United States Constitution, and the affect of this Court's decision in *Seminole Tribe of Florida v. Florida,* 517 U.S. 44 (1996), on the Eleventh Amendment question.

As this Court has already heard oral argument in *Alden v. Maine*, it is likely that the central issue in this case will be quickly resolved. A finding that a state is not immune from liability under the Fair Labor Standards Act will be dispositive. The converse, however, is not true. There are

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1. This is not to say that Respondent agrees with Petitioners' discussion of the law.

important differences between the issues in this case and the issues before the Court in *Alden*; even if this Court were to affirm the Supreme Court of Maine, and find that the State of Maine enjoys sovereign immunity from a Fair Labor Standards Act claim, a different result could obtain in this case for two reasons:

First, Maine apparently enjoys common law sovereign immunity. In sharp contrast, the Supreme Court of New Mexico found that common law sovereign immunity was archaic and feudalistic, and abolished it in *Hicks v. State*, 88 N.M. 588, 544 P.2d 1153 (1975). *Accord, Torrance County Mental Health Program, Inc. v. New Mexico Health & Environment Dept.*, 113 N.M. 593, 830 P.2d 145 (1992). The only sovereign immunity which New Mexico presently enjoys is a statutory sovereign immunity, enacted after the abolition of common law sovereign immunity, which is quite limited in scope.

Second, the courts in Maine have refused to entertain lawsuits against the state arising under the Fair Labor Standards Act. At issue is whether the federal government can force those courts to hear cases that it does not want to hear. In sharp contrast, the Court of Appeals of New Mexico has agreed that our courts can and will decide claims brought against the state under the Fair Labor Standards Act. *Whittington v. State of New Mexico Dept. of Public Safety*, 966 P.2d 188 (Ct. App.), *cert. denied* by the New Mexico Supreme Court, October 14, 1998; *cert. pending* to the United States Supreme Court. This is consistent both with the Supremacy Clause of the United States Constitution, and with the New Mexico Constitution:

> The State of New Mexico is an inseparable part of the federal union, and the Constitution of the United States is the supreme law of the land.

New Mexico Constitution, Art. II, § 1.

CONCLUSION

Should this Court rule that states cannot enjoy any form of sovereign immunity with regard to claims arising under the Fair Labor Standards Act, the decision in *Alden*, is dispositive. Should the Court, however, find that the State of Maine is immune from claims arising under the Fair Labor Standards Act, then by accepting the petition for writ of certiorari this Court can directly address the question whether a different result should obtain in New Mexico due to the fact that New Mexico has abolished common law sovereign immunity and the courts of New Mexico have agreed that they will take jurisdiction over Fair Labor Standards Act claims against the State of New Mexico.

Respectfully submitted,

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